

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/FLN)

THIS DOCUMENT RELATES TO:

Debora Perez (0:17-cv-00597-JNE-FLN)

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

NOW COMES Plaintiff, Debora Perez, identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 637], and by and through undersigned counsel submits this, her Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

1. In February 2016, Ms. Perez contacted the undersigned counsel regarding an infection and subsequent treatment that she experienced, allegedly caused by the use of a Bair Hugger patient warming device during an orthopedic surgery.
2. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicate that a Bair Hugger device was used during the original surgery.
3. On February 27, 2017, counsel filed the current action in this Court pursuant to the Court's Pretrial Order No. 5.

4. Efforts to contact Ms. Perez to inform her of the Plaintiff Fact Sheet and other necessary steps of the litigation after filing this action were unsuccessful, including phone calls on the following dates:

- February 27, 2017
- May 2, 2017
- May 9, 2017
- May 17, 2017
- June 2, 2017
- June 8, 2017
- June 29, 2017
- July 18, 2017

5. Additionally, letters were sent to Ms. Perez on the following dates requesting her response to complete the Plaintiff Fact Sheet and warning that failure to comply would result in dismissal of her case:

- January 25, 2017
- June 8, 2017
- August 4, 2017

6. To date, the undersigned counsel has not been able to obtain the necessary information to comply with the requirements set forth by the Court's Pretrial Order No. 14.

7. However, to be precise, the undersigned counsel is without any knowledge of circumstances that may preclude Plaintiff from responding to the counsel's contact attempts and efforts or completing the Plaintiff Fact Sheet.

In light of the foregoing, the undersigned counsel respectfully seeks a 120-day extension on the Pretrial Order No. 14. Nevertheless, if the Court deems dismissal of the Plaintiff's action to be proper, then it should be dismissed without prejudice granting an opportunity for Plaintiff to reinstate the action.

DATED: August 10, 2017

Respectfully submitted,

BERNSTEIN LIEBHARD LLP

By: /s/ Daniel C. Burke

Daniel C. Burke
10 E. 40th Street
New York, NY 10016
Telephone: (212) 779-1414
Facsimile: (212) 779-3218
Email: dburke@bernlieb.com
Email: dlee@bernlieb.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on August 10, 2017 a copy of the foregoing document was served on all parties via the Court's electronic filing system.

By: /s/Daniel C. Burke
Daniel C. Burke